THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.19964 of 1995

DATED: 19.12.2007

Between:

SIEMENS Limited, a public limited company incorporated under the Companies Act, 1956, having its registered office at 130, Pandurang Budhkar Marg, Worli, Bombay, and amongst other places, having a branch office at Secunderabad, rep. by its Senior Personnel Manager.

.. Petitioner

And

The Presiding Officer, Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad and another.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.19964 of 1995

ORDER:

This writ petition is filed seeking a Certiorari to call for the records relating to the order, dated 05.08.1995, made in M.P.No.32 of 1994, on the file of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, and quash the same as arbitrary and illegal.

2. Earlier, when the 2nd respondent was called thrice, neither he was present nor there was any representation on his behalf. Therefore, when the writ petition had come up for hearing on 12.03.2007, this Court, after hearing the learned counsel for the petitioner, allowed the writ petition, setting aside the impugned order, dated 05.08.1995, passed by the Labour Court in M.P.No.32 of 1994. Thereafter, on filing of W.P.M.P.No.33164 of 2007 by the 2nd respondent, under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure, the order, dated 12.03.2007, was recalled and the writ petition was restored to file. That is how the matter has come up for hearing today.

3. Heard the learned counsel for the petitioner and the 2nd respondent in person.

4. It appears, the 2nd respondent laid a claim under Section 33-C (2) of the Industrial Disputes act, 1947 (for short 'the Act') before the

Labour Court claiming certain benefits and also for difference of house rent subsidy from 01.10.1982 to 01.10.1994 at the rate of Rs.450/- per month. The Labour Court, by the impugned order dated 05.08.1995, partly allowed the claim of the 2nd respondent granting an amount of Rs.64,800/- towards house rent subsidy. Aggrieved by the same, the petitioner-management preferred the present writ petition.

5. Learned counsel for the petitioner-management strenuously contended that the very petition is not maintainable under Section 33-C (2) of the Act for two reasons. Firstly, the 2nd respondent is not a workman within the meaning of the Act and, secondly, the claim is not relatable to any settlement arrived at between the parties and this aspect had missed the attention of the Labour Court. Further, the 2nd respondent, in his cross-examination, has categorically admitted that he is no more a workman. He stated that "*I am not covered by the Settlement, when once I was fitted in EG-I grade, I have become an officer of EG-I grade".*

6. The 2nd respondent, in person, argued that in view of Ex.W5, a file note regarding house rent, he is entitled for claiming difference of house rent allowance and, therefore, petition under Section 33-C (2) of the Act is maintainable.

7. I have given my earnest consideration to the respective submissions made by the learned counsel for the petitioner and the 2nd respondent in person and perused the impugned order and other material made available on record.

8. Admittedly, the 2nd respondent was fitted in EG-I grade (officer grade) with effect from 01.04.1989. Therefore, he cannot be called as

workman, within the meaning of the Act, after 01.04.1989, and, as such, his claim for house rent subsidy, under Section 33-C (2) of the Act, for the period beyond 01.04.1989, is not maintainable. Even, insofar as the claim for the period from 1982 till 01.04.1989 is concerned, except Ex.W5, there is no authenticated evidence placed before the Labour Court showing that the 2nd respondent is entitled for the amount claimed, apart from the fact that such a claim was belatedly filed. Further, the findings recorded by the Labour Court are not based on any authenticated evidence such as any settlement or a written order passed by the petitioner-management. Except Ex.W5 and some statement purported to have been made by the management's witness to the effect that 'generally speaking, an employee transferred is entitled for difference of house rent allowance', no other material was placed before the Labour Court. According to the 2nd respondent, there was no order passed by the management providing house rent subsidy of Rs.450/- per month. Even, Ex.W5 does not indicate as to the amount payable to the 2nd respondent, after watching his performance for one year. Thus, the findings recorded by the Labour Court are based neither on any authenticated evidence nor on any settlement nor any existing rights, but they are based only on some discussions held between the petitioner-management and the 2nd respondent, as well as some surmises and conjectures. Under those circumstances, I am of the opinion that the very petition filed by the 2nd respondent, under Section 33-C (2) of the Act, is not maintainable and the same ought not to have been entertained by the Labour Court.

9. For all the above reasons, the impugned order, dated 05.08.1995, passed by the Labour Court in M.P.No.32 of 1994, is

liable to be set aside and is, accordingly, set aside. However, this will not preclude the 2nd respondent from working out his remedies, as available under the law, since it is held that the very petition under Section 33-C (2) of the Act itself is not maintainable.

10. The writ petition is allowed to the extent indicated above. No order as to costs.

JUSTICE C.V. RAMULU

19th December, 2007.
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